

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. RPU-02-5
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**ORDER GRANTING REQUEST FOR CONFIDENTIALITY IN PART
AND DENYING IN PART**

(Issued December 6, 2002)

On November 8, 2002, Aquila, Inc., d/b/a Aquila Networks (Aquila), filed with the Utilities Board (Board) a request for confidential treatment of specified materials. The materials were included in the additional information filed by Aquila in response to the Board's July 5, 2002, and August 9, 2002, orders. Specifically, Aquila seeks confidential treatment of employee, revenue, and customer information as well as updates of its earlier responses to the Board's orders. The employee, revenue, and customer information was filed separately and marked confidential. Aquila supports its request for confidentiality with an affidavit by a corporate officer. Aquila cites Iowa Code §§ 22.7(3) and 22.7(6) as authority for confidential treatment of the information.

Iowa Code § 22.7(3) provides confidential treatment for trade secrets that are recognized and protected as such by law. The employee, revenue, and customer information submitted by Aquila includes operating information and supporting data that are of significant commercial value to Aquila. The supporting affidavit by Steven M. Jurek, Vice President, Regulatory Services, states that the specified information is

unpublished data not known outside of Aquila and is in fact restricted to certain Aquila employees.

The Board finds that the application and affidavit support a finding that the employee, revenue, and customer information constitutes a trade secret under Iowa Code § 550.2(4) as it derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure, and it is the subject of reasonable efforts to maintain its secrecy. The Board finds that this information, if released, would provide an advantage to Aquila's competitors.

In addition, Iowa Code § 22.7(6) provides confidential treatment to public records that are reports to government agencies and which, if released, would give advantage to competitors and would serve no public purpose. The Board also finds the employee, revenue, and customer information constitutes a report to a government agency and the Board finds that the release of the information would serve no public purpose. Therefore, the Board will hold the information confidential under the provisions of Iowa Code §§ 22.7(3) and 22.7(6) as requested by Aquila on November 8, 2002.

Aquila also requests confidential treatment of updates of its July 15, 2002, and August 19, 2002, responses to the Board's July 5, 2002, and August 9, 2002, orders. This information was not sealed in a separate envelope and was not marked confidential. Rather, the information was attached to Aquila's response to the

Board's orders filed on November 8, 2002. Aquila did not request confidential treatment of its previously filed updates that contained similar information. Therefore, the Board will not treat the updated information filed on November 8, 2002, as confidential.

Even if the information included in Aquila's updates was filed separately and labeled confidential, the information does not meet the requirements for confidential treatment under Iowa Code §§ 22.7(3) and 22.7(6). This information does not constitute a trade secret as it is readily ascertainable through Aquila's filed testimony in this proceeding. Moreover, the information does not give an unfair advantage to competitors of Aquila. Therefore, the Board will deny Aquila's request for confidential treatment of its updates of its July 15, 2002, and August 19, 2002, responses to the Board's July 5, 2002, and August 9, 2002, orders.

IT IS THEREFORE ORDERED:

1. The request for confidentiality filed by Aquila, Inc., d/b/a Aquila Networks, on November 8, 2002, is granted in part and denied in part as described in the body of this order.
2. The information deemed confidential shall be held as confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).
3. Because the hearing in Docket No. RPU-02-5 is scheduled to begin on December 16, 2002, the information that has been denied confidential treatment will

temporarily be held confidential only until December 13, 2002, shortening the 14-day period to seek an injunction provided for in 199 IAC 1.9(6)"d."

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6th day of December, 2002.